

Exhibit 1

Jim Barger

From: Jim Barger
Sent: Tuesday, January 17, 2012 10:36 AM
To: 'Selden, Jack W.'
Cc: Elliott Walthall; Henry Frohsin; njhcross@crosslawfirm.com; Ron Brunson; 'Bohl, Charles CHB (5415)'; Christie Jr., James S.; stacy.g.ward@usdoj.gov
Subject: RE: Paradies et al v. AseraCare / Dr. John Finn

Jack: We are surprised that you would not agree to this simple offer of compromise. For clarification, Relators are offering to give the time that you need and have requested – it is Defendants who are not reciprocating by refusing to stay the period for response to summary judgment motions until after discovery has been completed and by previously refusing to grant additional time for Relators to disclose experts at the outset of this case. I am additionally surprised because I thought I understood you to agree on the telephone that Relators have a right to conduct depositions prior to responding to a Motion for Summary Judgment as is expressly contemplated by Rule 56(d). I must have been mistaken on that point. Further, while we appreciate your giving us two weeks additional time to respond to Defendants' latest round of written discovery, Relators previously gave many additional months for Defendants to fully respond to written discovery requests before being forced to raise the issue with the Court. Finally, the request that is now sought by Defendants – an extension of the time for disclosure of expert reports – was something that Defendants insisted be "not modified" at the outset of this litigation and refused all efforts and requests by Relators that more time be allowed. The current schedule is of the Defendants' making. Nevertheless, we are offering to compromise and to grant your request, but that offer is being refused. Unless you wish to discuss further, we will take your email below as evidence that the parties have met and conferred on the issue of deferring the response to summary judgment. I regret that a compromise was not reached but otherwise appreciate your cooperation. Regards, Jim

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From: Selden, Jack W. [mailto:jselden@babco.com]
Sent: Monday, January 16, 2012 8:27 PM
To: Jim Barger
Cc: Elliott Walthall; Henry Frohsin; njhcross@crosslawfirm.com; Ron Brunson; 'Bohl, Charles CHB (5415)'; Christie Jr., James S.
Subject: RE: Paradies et al v. AseraCare / Dr. John Finn

Jim:

I only asked for 24-48 hours additional time in order to ensure we could file a more detailed report for one of our experts, Dr. John Finn, based upon his request for that limited additional time. In light of the more significant extension of time (to January 25th) for a much broader discovery response we recently gave to you per your request, I am surprised and disappointed by your response. I don't think that an additional 24-48 hours for additional details from only one of our experts will prejudice the relators. We cannot consent to your request in regard to the pending summary judgment motion, even if we could, as it could result in the briefing not being completed until after the trial date. But we will work with you to expedite the deposition schedule for our experts. We will submit what we have in regard to Dr. Finn tonight and then, if and as necessary, quickly supplement.



Jack W. Selden
Phone 205-521-8472

From: Jim Barger [mailto:jim@frohsinbarger.com]
Sent: Monday, January 16, 2012 6:08 PM
To: Selden, Jack W.
Cc: Elliott Walthall; Henry Frohsin; njhcross@crosslawfirm.com; Ron Brunson
Subject: RE: Paradies et al v. AseraCare / Question

Jack: Our concern with your request is that delay of Dr. Finn's expert report further delays our ability to examine the report and timely depose Dr. Finn and the other deponents all of whom must be deposed before Relators can adequately address the issues raised in the summary judgment motion filed late Friday. If Defendants will consent under Rule 56(d) to defer the time for Relators to respond to the summary judgment motion until 30 days after the affiants in support of the motion have been properly deposed – as is there right – then Relators will offer the courtesy of extending the time for Dr. Finn's expert report.

We must note, however, that at the outset of this litigation, Defendants refused to grant any such courtesy to Relators with regard to expert disclosures and explicitly sought and received an Order from the Court above Relator's objection greatly shortening the period for Relators to provide expert reports outside the 90 days from trial default provided in Rule 26(a)(2)(D)(i). The fact of the matter is that it simply takes much longer to get such expert reports completed than Defendants initially estimated to the Court, but I suppose that is water under the bridge. Please let us know if this compromise is acceptable. Thanks. Jim

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From: Selden, Jack W. [mailto:jselden@babco.com]
Sent: Monday, January 16, 2012 5:03 PM
To: Jim Barger
Subject: RE: Paradies et al v. AseraCare / Question

Thank you, Jim. For clarity, the request only relates to Dr. John Finn. I will be in my office until at least 7:00pm this evening.



Jack W. Selden
Phone 205-521-8472

From: Jim Barger [mailto:jim@frohsinbarger.com]
Sent: Monday, January 16, 2012 5:01 PM
To: Selden, Jack W.
Subject: RE: Paradies et al v. AseraCare / Question

Jack: I have gotten in touch with some but not all of the necessary folks on our team – we are still considering your request for an extension of the deadline for your expert report. Just wanted to keep you posted and to let you know that I am working on it. Hope to have an answer for you tonight. Jim

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From: Selden, Jack W. [mailto:jselden@babco.com]
Sent: Monday, January 16, 2012 1:24 PM

To: Jim Barger

Subject: Paradies et al v. AseraCare / Question

Jim:

Can you give me a quick call this afternoon to discuss one question I have? I will be on a call between 3:00-4:00pm, but otherwise available. Thank you.



Jack W. Selden

Partner

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